

MAR 25 2002

DIVISION OF
SPECIAL EDUCATIONBEFORE THE
TENNESSEE DEPARTMENT OF EDUCATION

IN THE MATTER OF:

[REDACTED]

v.

RUTHERFORD COUNTY SCHOOL SYSTEM

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No. 01-71

MEMORANDUM OPINION AND FINAL ORDER

This dispute arose when [REDACTED] filed a request for due process hearing. Mr. [REDACTED] maintained that his daughter was not receiving a Free Appropriate Public Education. Mr. [REDACTED]'s daughter, [REDACTED], is a sixth-grader in the Rutherford County School System. Mr. [REDACTED] asked for a due process hearing because he believes that [REDACTED] does not need the direct services currently being provided under her Individualized Education Plan (IEP). Mr. [REDACTED] maintains that [REDACTED] can receive an appropriate public education by attending regular classes with an aide.

The due process hearing in this case took place on January 10, 2002. Five witnesses testified and numerous documents were introduced into evidence. Mr. John D. Kitch, Esq. represented the School System and Mr. [REDACTED] appeared *pro se* on behalf of his daughter. Based upon the testimony and demeanor of the witnesses and the evidence introduced at the hearing, the Court finds:

A. WITNESS CREDIBILITY

1. The Court finds Ms. Penny Hooper, Coordinator of Special Education for Rutherford County Schools, credible.

2. The Court finds Ms. Beverley English, a school social worker with the Rutherford County Schools, credible.

3. The Court finds Mr. Moe Torres, [REDACTED] sixth grade English and social studies teacher, credible.

4. The Court finds Ms. Pat Sumners, a special education teacher at Central Middle School, credible.

5. The Court finds Mr. [REDACTED], [REDACTED] s father, credible.

B. FINDINGS OF FACT

1. [REDACTED] is a sixth grade student in the Rutherford County School System. Tr. at p. 13 (hereinafter Tr. at p. __).

2. [REDACTED] has only been enrolled in the Rutherford County School System since the fall of 2001. *Id.*

3. [REDACTED] previously attended the Murfreesboro City Schools. Tr. at p. 14.

4. Ms. Penny Hooper is the coordinator of special education in the Rutherford County School System and an expert in special education. Tr. at pp. 10, 12.

5. [REDACTED] scored a composite 49 on a WISC-III intelligence test given by Kenneth J. Cancilla, a certified school psychologist, on September 13, 1999. Exhibit 1 at p. 1.

6. The average IQ range on a WISC-III is between 85 and 115. (Tr. at p. 15).

7. [REDACTED] s scores place her in the mentally retarded range. *Id.*

8. While in the Murphreesboro School System, [REDACTED] was diagnosed with dysfluencies in conversational speech. Tr. at p. 19.

9. While in the Murphreesboro School System, [REDACTED] was offered only consultation for fifteen minutes per week to meet her special needs. *Id.*

10. The Murphreesboro IEP tried to address [REDACTED]'s special needs within the regular education classroom. Tr. at pp. 18-21.

101 [REDACTED] regressed in both speech and academic areas with the limited services provided by the Murphreesboro Schools. Tr. at p. 21; Ex. 2.

11. Various Murphreesboro M-Team members disagreed strenuously with the decision to address [REDACTED]'s needs entirely within the regular education classroom. Tr. at pp. 22-24; Ex. 3.

12. Rutherford County Schools held an IEP Team meeting for [REDACTED] on September 11, 2001 and Mr. [REDACTED] waived the ten-day notice requirement of that meeting. Ex. 5; Tr. at pp. 27-28.

13. The Rutherford County IEP Team recommended more intensive special education services to meet [REDACTED]'s individual needs. Ex. 6.

14. [REDACTED]'s scores on her TCAP Individual Profile Report were consistent with a full scale IQ of 49 on the WISC-III. Tr. at p. 38; Ex. 8.

15. Mr. [REDACTED] wants his daughter taught in a regular education classroom with a teacher's assistant. Tr. at pp. 64-65.

16. The Rutherford County School System held only one IEP Team meeting for [REDACTED]. Tr. at p. 77.

17. [REDACTED] tries hard in class and is a likable student. Tr. at p. 83.

18. Despite her best efforts, [REDACTED] is not capable of sixth-grade work at this time. Tr. at p. 84.

19. Mr. Torres tried to implement the Murphreesboro IEP and it simply did not work for [REDACTED]. Tr. at p. 85.

20. [REDACTED] needs to develop life skills that cannot be taught to her in the regular education classroom. Tr. at pp. 87-88.

III. CONCLUSIONS OF LAW

Congress intended for the Individuals with Disabilities Education Act ("IDEA") (20 U.S.C.A. 1400 *et seq.*) to guaranty children with disabilities a free appropriate public education ("FAPE"). *Renner v. Board of Educ.*, 185 F.3d 635, 644 (6th Cir. 1999). In determining whether or not a public school system has offered a disabled child FAPE, a court must first determine whether the school system has complied with the procedures mandated by the IDEA. *See, Board of Educ. V. Rowley*, 458 U.S. 176, 206, 102 S.Ct. 3034, 73 L.Ed.3d 690 (1982). In return for accepting federal monies, the IDEA requires states to identify, locate, and evaluate all disabled children residing in the state who are in need of special education and related services. 20 U.S.C.A. § 1412(2)(C). School districts receiving federal funding under IDEA must establish an individualized educational plan ("IEP") for each child with a disability. 20 U.S.C.A. § 1414(a)(5). Congress further defined an IEP as a written statement developed by a professional qualified to deliver the specially designed instruction, the child's teacher, and the parents of the child. *See*, 20 U.S.C.A. 1401 § 1401(a)(20).

Placement decisions must be based on the IEP, which must contain a statement of measurable annual goals, including benchmarks or short term objectives. 20 U.S.C.A. § 1400. A legally sufficient IEP must also describe the educational and other services to be provided, and criteria for evaluating the child's progress. *Id.*; *see also, Knable ex rel. Knable v. Bexley City School Dist.*, 238 F.3d 755, 763 (6th Cir. 2001).

The *Rowley* Court stressed that Congress had emphasized that full participation by concerned parties in the IEP process would, in most cases, ensure that much if not all of what Congress wanted in the way of substantive content would make its way into an IEP. *Rowley*, 458 U.S. at 206.

Congress did not, however, define "appropriate education" and instead, left it to the courts and the hearing officers to give content to the requirements of an appropriate education. *Id.* at 458 U.S. 187.

The *Rowley* Court acknowledged the difficulty (if not impossibility) of defining an "appropriate" education for all learning disabled children. For all such children it set a standard requiring all IEPs to provide at least "educational benefit." *Rowley* at 458 U.S. 201-202.

This circuit requires administrative law judges and hearing officers to strictly review an IEP for procedural compliance. *Dong v. Board of Educ.*, 197 F.3d 793, 800 (6th Cir. 1999); *see also*, *Doe v. Defendant I*, 898 F.2d 1186, 1190-91 (6th Cir. 1990) and *Burilovich v. Board of Educ. Of Lincoln*, 208 F.3d 560, 567 (6th Cir. 2000). Having assured itself that the process met the requirements of IDEA, a reviewing court or hearing officer must then determine whether the IEP developed by the school system in accordance with the mandated procedures is reasonably calculated to enable the child to receive educational benefits. *Id.* At 206-207. There is no violation of IDEA if the school system has satisfied both requirements. *Rowley* 458 U.S. at 206-207.

Courts are not permitted to substitute their own notions of sound educational policy for those of the school officials. *Thomas v. Cincinnati Bd. Of Educ.*, 918 F.2d 618, 624 (6th Cir. 1990). Instead, courts are to give deference to state and local agencies in choosing the educational methodology most suitable to the child's needs. *Rowley* at 458 U.S. 207. Courts should only intervene where a preponderance of the evidence weighs against the local education agency's decision. *Id.* at 206.

In this case the Rutherford County School System has satisfied both prongs of the test for providing [REDACTED] with a free appropriate public education. The school system, to its credit acted promptly when it discovered that the previous IEP developed by the Murphreesboro School System was wholly inadequate to meet [REDACTED]'s educational needs.

Mr. [REDACTED] attended the IEP meeting called by the Rutherford County School System and, although he did not agree with the recommendations, he had ample opportunity for input.

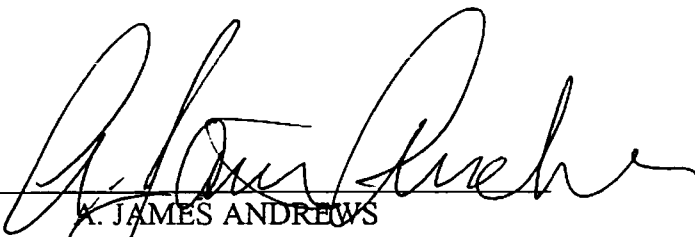
By all accounts, [REDACTED] is a lovable sixth grader who works hard to progress.

The Court **FINDS** that the Rutherford County School System has complied with both the letter and the spirit of the law in addressing [REDACTED]'s educational needs in the least restrictive environment given her special needs.

The court further **FINDS** that Rutherford County Schools is the prevailing party.

This decision is binding on both parties unless the decision is appealed. Any party aggrieved by this decision may appeal to the Chancery Court for Davidson County, Tennessee, or may seek review in the United States District Court for the district in which the school system is located. Such appeal or review must be sought within sixty days of entry of a final order in a non-reimbursement case or three years in cases involving educational cost and expenses. In appropriate cases the reviewing court may stay this final order.

IT IS SO **ORDERED** THIS 15th DAY OF MARCH, 2002.


K. JAMES ANDREWS
Administrative Law Judge

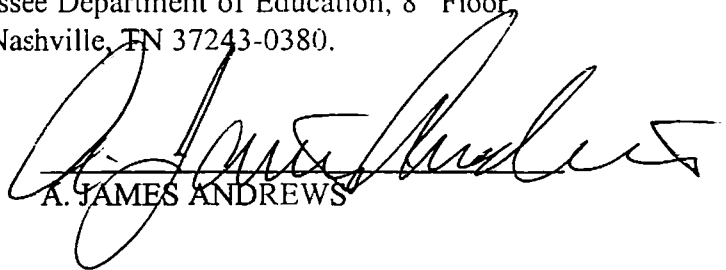
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing FINAL ORDER has been sent by first class mail this 15th day of March, 2002 to the following:

Mr. [REDACTED] father of the student, [REDACTED] at [REDACTED]
[REDACTED]

ATTORNEY FOR RUTHERFORD COUNTY: Mr. John Kitch, Suite 350, 2300 Hillsboro Road, Nashville, TN 37212.

DIVISION OF SPECIAL EDUCATION, Tennessee Department of Education, 8th Floor, Gateway Plaza, 710 James Robertson Parkway, Nashville, TN 37243-0380.


A. JAMES ANDREWS